

# Exhibit G

**Leeder, Bill**

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**From:** Anthony Iripino <airpino@irpinolaw.com>  
**Sent:** Saturday, August 3, 2019 12:08 PM  
**To:** Leeder, Bill; Padgett, William; Josh Gay  
**Cc:** Pearl Robertson  
**Subject:** [EXTERNAL]FW: EXTERNAL-H. D. Smith - Notice of Clawback  
**Attachments:** H. D. Smith - Notice of Clawback - 8-2-19.pdf; PSJ3 RICO & Consp Exh 654 - HDS\_MDL\_00218623.pdf

Bill / Will, we received H. D. Smith's notice of claw-back. We have analyzed the document at issue and do not agree with H. D. Smith's privilege claim. We hereby challenge H. D. Smith's privilege claim over this document.

As an initial matter, the 3 persons involved in the communication are all non-attorneys (George Euson – Director of Corporate Compliance and Security, Thomas Twitty – VP of Operations, and Dave Watkins – CFO), and all are acting in their business roles. Moreover, the communication primarily addresses the business matter of regulatory compliance, which is not entitled to privileged treatment. By way of example, the top email (from Thomas Twitty – VP of Operations) addresses the business decision of enhancing SOMS and the costs/difficulty with same (“while we do need to enhance functionality to look at frequency, size and order patterns, stating that may work against us as the DEA may expect that we already are. The number of visits and investigations that this would cause would be unreasonable....”). These types of privilege claims have been addressed and overruled by SM Cohen, including most recently in DR 14-9 (Doc. 1678) at p. 1 (“the Special Master’s decisions are based on the distinction between legal advice and business advice, applying the principal that compliance with regulations is usually a business matter, not a legal one”).

As this involves a single document, and since it is an exhibit to multiple briefs which have already been sent out to the Court and the parties, I am asking Josh Gay (copied) to add this item to the current discovery agenda for priority consideration – and I am including your 8/2 notice of claw-back as well as a copy of the clawed-back document at issue (Ex. 654 to PSJ3 / Ex. 45 to PSJ9) – which I ask Josh to include in the submission along with this email.

Bill, if you would like to make an additional submission today (or even tomorrow) to SM Cohen and get it to Josh (while copying us), we are fine with that, however, this matter should be addressed and resolved ASAP.

Josh, please include the attached documents (as well as this email), and put following on the agenda:

**NEW Agenda Item**

**Party:** H. D. Smith  
**New / Previous ...:** NEW  
**Subject of Dispute:** PEC's Challenge to H. D. Smith Privilege Claim  
**Tab No. w/ Title:** 8/2 Claw-back letter from B. Leeder  
8/3 email from A. Iripino (attaching clawed-back document at issue)  
**Plaintiffs' Attorney:** Iripino  
**Defendant Attorney:** Leeder  
**Notes:** The PEC and H. D. Smith have a current privilege dispute. On 8/2 H. D. Smith provided a notice of claw-back over a document which was attached as an exhibit to Plaintiffs' opposition briefs (Ex. 654 to PSJ3 - Doc. No. 2090, and Ex. 45 to PSJ9 – Doc. No. 2094). The PEC disputes H. D. Smith's privilege claim and claw-back of this document, and requests priority consideration of this matter.

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From: 2804 Discovery, MDL <[mdl2804discovery@motleyrice.com](mailto:mdl2804discovery@motleyrice.com)>  
Sent: Friday, August 2, 2019 3:46 PM  
To: MDL 2804 <[MDL2804@motleyrice.com](mailto:MDL2804@motleyrice.com)>  
Subject: FW: EXTERNAL-H. D. Smith - Notice of Clawback

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From: Leeder, Bill <[Bill.Leeder@btlaw.com](mailto:Bill.Leeder@btlaw.com)>  
Sent: Friday, August 2, 2019 8:40:47 PM  
To: 2804 Discovery, MDL <[mdl2804discovery@motleyrice.com](mailto:mdl2804discovery@motleyrice.com)>; [xALLDEFENDANTS-MDL2804-Service@arnoldporter.com](mailto:xALLDEFENDANTS-MDL2804-Service@arnoldporter.com) <[xALLDEFENDANTS-MDL2804-Service@arnoldporter.com](mailto:xALLDEFENDANTS-MDL2804-Service@arnoldporter.com)>  
Cc: Padgett, William <[William.Padgett@btlaw.com](mailto:William.Padgett@btlaw.com)>; Matsoukas, Kathleen <[Kathleen.Matsoukas@btlaw.com](mailto:Kathleen.Matsoukas@btlaw.com)>  
Subject: EXTERNAL-H. D. Smith - Notice of Clawback

Counsel,

Attached is correspondence regarding H. D. Smith's Notice of Clawback. Please note that this relates to a document attached as Exhibit 654 to Plaintiffs' Consolidated Memorandum in Opposition to Defendants' Motions for Summary Judgment on Plaintiffs' Civil Conspiracy, RICO and OCPA Claims (PSJ3, Dkt. 2090) and as Exhibit 45 to Plaintiffs' Memorandum in Opposition to Non-RICO Small Distributors' Motion for Summary Judgment Based on Their *De Minimis* Status (PSJ9, Dkt. 2094).

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